

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 13-10535)
)
TAMMY SUE DISKEY)
)
Debtor)
)
)
MARTIN E. SEIFERT, TRUSTEE)
)
Plaintiff)
)
vs.) PROC. NO. 14-1095
)
TAMMY SUE DISKEY)
)
Defendant)

DECISION

On May 19, 2015.

By this adversary proceeding, the trustee seeks to revoke the debtor's discharge, pursuant to § 727(a)(6) and § 727(d)(3), for refusing to obey a lawful order of the court, requiring the turnover of federal and state tax returns and refunds. The matter has been submitted to the court on stipulations of fact and briefs of counsel.

The parties agree that the debtor was advised at the § 341 meeting that she needed to provide copies of the tax returns to the trustee and turnover any tax refunds. They also agree that the trustee made several (unsuccessful) requests to get that information from the debtor; that he then filed a motion for turnover in the underlying bankruptcy proceeding, which was granted on February 12, 2014, without objection; and that, to date, the debtor has not complied with that order. Joint Stipulation of Facts ¶¶ 10-14. Thus, there is no dispute that the debtor has not obeyed the order of

February 12. The dispute is whether the debtor's admitted disobedience constitutes a refusal to obey the court's order.

The term used in § 727(a)(6) is "refused" not "failed." Accordingly, the Court must find that the Debtor's lack of compliance with the relevant order was willful and intentional. The party objecting to discharge satisfies this burden by demonstrating that the debtor received the order in question and failed to comply with its terms. Such a showing then imposes upon the debtor an obligation to explain his non-compliance. In re Jordan, 521 F.3d 430, 433 (4th Cir. 2008).

This is essentially the same showing and the same allocation of burdens that apply in civil contempt proceedings. In re Freeman, 293 B.R. 413, 415-16 (Bankr N.D. Ohio 2002); In re Williams, 2014 WL 1017604 *2 (Bankr. N.D. Ohio 2014). See also, Matter of Berryhill, 127 B.R. 427, 429 (Bankr. N.D. Ind. 1991) (discussing contempt).

The debtor argues that her failure to comply with the court's order was not willful – and therefore does not constitute a refusal – because counsel lost contact with his client; so her failure to obey may be because she was not aware of the order. The stipulated facts say nothing of this and do not support counsel's argument. To the contrary, the record reflects that both the debtor and her counsel were properly served with the trustee's motion, notice of the opportunity to object to it and the court's order. That is sufficient to prove at least constructive knowledge of the order and that is enough. In re Walter, 265 B.R. 753, 759-60 (Bankr. N.D. Ohio 2001); Williams, 2014 WL 1017604 *2-3.

Yet, even if we accept the factually unsupported argument concerning the debtor's lack of knowledge, it is a self-inflicted wound. "In bankruptcy, debtors have a duty to stay in touch." In re Tatum, 2012 WL 2076424 *1 (Bankr. D. Kan. 2012). See also, Fed. R. Bankr. P. Rule 4002(a)(5)

(“the debtor shall – file a statement of any change of debtor’s address”). “A debtor cannot avoid the consequences of failing to obey a court order . . . by simply changing his address and then not informing the court as required. . . .” In re Williams, 2014 WL 1017604 *3. Furthermore, the debtor cannot really claim ignorance of her duties to the trustee. See, 11 U.S.C. § 521(a)(3), (4) (duty to cooperate with the trustee and surrender property to the trustee). She attended the § 341 meeting where she was informed of what the trustee needed. It is only because she failed to comply with those instructions and then ignored the trustee’s subsequent requests that the trustee was forced to seek an order compelling her to perform her statutory duties. If the court were to accept the debtor’s argument, any debtor could escape scrutiny by relocating without informing anyone and then use their resulting ignorance as a defense. That is not the case. Cf., Pesaplastic, C.A. v. Cincinnati Milacron Co., 799 F.2d 1510, 1521 (11th Cir. 1986) (impossibility is not a defense to contempt “where the person charged with contempt is responsible for the inability to comply”).

Judgment will be entered accordingly.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court